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April 4, 1996

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: **EX PARTE**
Docket CC No. 95-185

Dear Mr. Caton:

Late yesterday Leonard Kennedy, Werner Hartenberger and I met, on behalf of Cox Enterprises, Inc. and Comcast Corporation, with Regina Keeney, Chief of the Common Carrier Bureau and David Ellen of the Office of Plans and Policy to discuss the Commission's jurisdiction over LEC-to-CMRS interconnection. The positions discussed were those taken in the comments and reply comments filed by Cox Enterprises, Inc. and Comcast Corporation in this docket. The attached hand-out on the legislative history of the 1993 Budget Act and the attached chart on the Commission's jurisdiction over CMRS were distributed at the meeting.

This letter is being filed in original with two duplicates pursuant to the Commission's rules. If you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

Laura H. Phillips

Counsel for Cox Enterprises, Inc.
Comcast Corporation

LHP/css
cc: Regina Keeney, Esq.
David Ellen, Esq.

103D CONGRESS
1st Session | HOUSE OF REPRESENTATIVES | REPORT
103-213

OMNIBUS BUDGET RECONCILIATION ACT OF 1993

AUGUST 4, 1993.—Ordered to be printed

Mr. SABO, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2264]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Budget Reconciliation Act of 1993".

SEC. 2. TABLE OF CONTENTS.

The table of contents is as follows:

nic drives, overlook sites, picnic tables, toilet facilities, designated water areas, undeveloped or lightly developed shoreland, or general visitor information.

"(3) PER VEHICLE LIMIT.—The fee under this subsection for use of a site or facility (other than an overnight camping site or facility or any other site or facility at which a fee is charged for use of the site or facility as of the date of the enactment of this paragraph) for persons entering the site or facility by private, noncommercial vehicle transporting not more than 5 persons (including the driver) shall not exceed $3 per day per vehicle. Such maximum amount may be adjusted annually by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

"(4) DEPOSIT INTO TREASURY ACCOUNT.—All fees collected under this subsection shall be deposited into the Treasury account for the Corps of Engineers established by section 4(i) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(i)).".

(b) CONFORMING AMENDMENT FOR CAMPSITES.—Section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(b)) is amended by striking the next to the last sentence.

TITLE VI—COMMUNICATIONS LICENSING AND SPECTRUM ALLOCATION IMPROVEMENT

SEC. 6001. TRANSFER OF AUCTIONABLE FREQUENCIES.

(a) AMENDMENT.—The National Telecommunications and Information Administration Organization Act (47 U.S.C. 901 et seq.) is amended—

(1) by striking the heading of part B and inserting the following:

"PART C—SPECIAL AND TEMPORARY PROVISIONS",

(2) by redesignating sections 131 through 135 as sections 151 through 155, respectively, and

(3) by inserting after part A the following new part:

"PART B—TRANSFER OF AUCTIONABLE FREQUENCIES.

"SEC. 111. DEFINITIONS.

"As used in this part:

"(1) The term 'allocation' means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services.

"(2) The term 'assignment' means an authorization given to a station licensee to use specific frequencies or channels.

Senate amendment

Section 322(c)(8) as added by the Senate Amendment contains similar definitions of the terms "commercial mobile service" and "private land mobile service". The differences in the Senate definition of "commercial mobile service" are: (1) that "offered on an indiscriminate basis" is not one of the tests for determining a "commercial mobile service" in the Senate Amendment; (2) the Senate definition expressly recognizes the Commission's authority to define the terms used in defining "commercial mobile service"; and (3) the Senate definition requires that "interconnected service" must be made available to the public, as opposed to the House definition which simply requires the service offered to the public to be "interconnected". In other words, under the House definition, only one aspect of the service needs to be interconnected, whereas under the Senate language, the interconnected service must be broadly available. The Senate Amendment defines "interconnected service" as a service that is interconnected with the public switched network or service for which an interconnection request is pending. The definition of "private land mobile service" in the Senate amendment is virtually identical to the definition of "private mobile service" in the House bill.

Conference report

The Conference Report adopts the Senate definitions with minor changes. The Conference Report deletes the word "broad" before "classes of users" in order to ensure that the definition of "commercial mobile services" encompasses all providers who offer their services to broad or narrow classes of users so as to be effectively available to a substantial portion of the public.

Further, the definition of "private mobile service" is amended to make clear that the term includes neither a commercial mobile service nor the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

The Commission may determine, for instances, that a mobile service offered to the public and interconnected with the public switched network is not the functional equivalent of a commercial mobile service if it is provided over a system that, either individually or as part of a network of systems or licensees, does not employ frequency or channel reuse or its equivalent (or any other techniques for augmenting the number of channels of communication made available for such mobile service) and does not make service available throughout a standard metropolitan statistical area or other similar wide geographic area.

SECTION (B)

House bill

Subsection (B) of the House bill adds a conforming amendment to the definition in Section 3(n) of the Communications Act of "mobile service" to clarify that the term includes all items previously defined as "private land mobile service" and includes the licenses to be issued by the Commission pursuant to the proceedings for personal communications services.

Senate amendment

The Senate Amendment makes almost the identical changes to the definition of "mobile service" in Section 3(n) of the Communications Act except that the Senate Amendment clarifies that the term does not include rural radio service or the provision by a local exchange carrier of telephone exchange service by radio instead of by wire.

Conference agreement

The Conference Agreement adopts the House definition.

SUBSECTION (b)(2)

House bill

Section (b)(2) of the House bill makes additional conforming amendments to clarify headings and spacing.

Senate amendment

The Senate Amendment does not contain the provisions contained in the House bill. The Senate Amendment contains a technical amendment to Section 2(b) of the Communications Act to clarify that the Commission has the authority to regulate commercial mobile services.

Conference agreement

The Conference Agreement adopts the Senate position.

SUBSECTION (c)

House bill

Section 5206 of the House bill established effective dates and deadlines for Commission action. Under the House bill, the amendments made by the above chapter are effective upon the date of enactment, except that the amendments made by section 5205 on regulatory parity take effect one year after enactment, and that persons that provide private land mobile services shall continue to be treated as a provider of private land mobile service until 3 years after enactment. The House bill directs the FCC to prescribe rules to implement competitive bidding within 210 days of enactment. The House bill directs the Commission to, within 180 days after enactment, issue a final report and order in two proceedings regarding personal communications services and begin issuing licenses within 270 days after enactment. Finally, the House bill directs the Commission, within 1 year after enactment, to alter its rules regarding private land mobile services to provide for an orderly transition of these services to regulation as common carrier services.

Senate amendment

Under the Senate Amendment, all provisions regarding regulatory parity take effect one year after enactment, except (1) the provisions in 332(c)(1)(A) regarding the treatment of commercial mobile services as common carrier services take effect upon enactment; and (2) any person that provides private land mobile services before such date of enactment shall continue to be treated as a pro

THE CHANGING ROLE OF FCC JURISDICTION OVER MOBILE AND WIRELINE SERVICES

Comcast Corporation ("Comcast") submits this chart to demonstrate how the legislative developments in the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act of 1993") and the Telecommunications Act of 1996 ("TCA of 1996") have changed the Communications Act of 1934 (the "Act") to vest the Commission with exclusive jurisdiction over all rates regarding LEC-to-CMRS interconnection.

Statute/Case Law	Interstate	Intrastate
In 1914, the Supreme Court held in *Shreveport Rate Cases*[1] that the Interstate Commerce Commission ("ICC") had the power under the governing federal statute to order an increase in specific intrastate railroad rates charged to customers in order to avoid discrimination against interstate commerce.	The authority delegated by Congress to the ICC "extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance."[2]	States have no jurisdiction. The ICC has jurisdiction over intrastate railroad rates. "The powers conferred by the act are not thereby limited where interstate commerce itself is involved. This is plainly the case when the Commission finds that unjust discrimination against interstate trade arises from the relation of intrastate to interstate rates as maintained by a carrier subject to the act."[3]

The Communications Act of 1934 (the "Act") establishes dual regulatory framework.	Section 2(a) reserves to the FCC exclusive jurisdiction over interstate communications.	Section 2(b) reserves to the states jurisdiction over intrastate communications. When Congress was drafting the Communications Act, Section 2(b) was proposed and supported by state commissions "in reaction to what they perceived to be the evil of excessive federal regulation of intrastate service such as was sanctioned by the *Shreveport Rate Cases*[.]"[4/]
In 1964, the U.S. Court of Appeals for the D.C. Circuit ("Court of Appeals") held that a space research laboratory's local microwave communications facilities, although physically located entirely within one state, are jurisdictionally interstate when used to terminate spacecraft data communications primarily in interstate or foreign commerce.[5/]	The FCC has exclusive jurisdiction over physically intrastate facilities used to terminate communications in interstate or foreign commerce.	States do not have jurisdiction over physically intrastate facilities used to terminate communications in interstate or foreign commerce.
In 1980, the Second Circuit held that the charges for intrastate, distribution of interstate foreign exchange ("FX") and common control switching arrangement ("CCSA") services are jurisdictionally interstate.[6/]	The FCC has jurisdiction over all jurisdictionally interstate services: "The key to jurisdiction is the nature of the communication itself rather than the physical location of the technology."[7/]	The states lack jurisdiction over physically intrastate, but jurisdictionally interstate facilities and services.

In 1984, the Court of Appeals held that the FCC has authority to prohibit restrictions on resale of intrastate WATS services used to complete interstate communications.[8/]	The "dividing line between the regulatory jurisdictions of the FCC and the states depends on the 'nature of the communications which pass through the facilities [and not on] the physical location of the lines.'"[9/]	The states do not have jurisdiction over services that are jurisdictionally interstate in nature, even if physically intrastate.
In 1987, the Supreme Court held in *Louisiana PSC* that the Section 2(b) "fences off" intrastate depreciation rates from FCC jurisdiction. To preempt state regulation of such matters, the FCC must show that: (i) it is impossible to separate the intrastate and interstate portions of the subject to be regulated; and (ii) the state regulation conflicts with the valid federal goal.	Section 2(a) reserves to the Commission exclusive jurisdiction over interstate depreciation rates.	Section 2(b) reserves to the states jurisdiction over intrastate depreciation rates.
In 1987, the FCC finds pursuant to *Louisiana PSC* that it lacks jurisdiction over intrastate LEC-to-cellular interconnection rates and costs because they are severable from interstate LEC-to-cellular rates and costs.[10/]	The FCC has jurisdiction over LEC-to-cellular rates for interstate services.	The states have jurisdiction over LEC-to-cellular rates for intrastate services.

In 1993, Congress enacts the Budget Act of 1993, amending Sections 2(b) and 332 of the Act.	All CMRS is "federalized" by Section 332, which vests plenary authority in the FCC to implement the definition of, and level of Title II regulation applicable to, all CMRS providers. Section 332 also gives the Commission exclusive authority to hear state petitions to receive rate regulation authority. Section 332(c)(1)(B) authorizes the Commission to order physical interconnection between CMRS providers and LECs pursuant to Section 201. Section 201(a) authorizes the Commission to order all common carriers engaged in interstate or foreign communications by wire or radio to establish physical interconnections, upon reasonable request, and at just, reasonable and nondiscriminatory rates. LEC-to-CMRS interconnection is "federalized."	Section 2(b) is amended to except Section 332 from the general reservation of state jurisdictional authority. The states no longer have any jurisdiction over CMRS, or LEC-to-CMRS interconnection rates. The scope of federal authority reverts to the amplitude of pre-Section 2(b) *Shreveport Rate Cases.*

In 1996, Congress enacts the TCA of 1996. Section 251(d)(1) authorizes the FCC to complete all actions necessary to establish interconnection and access regulations. Section 251(d)(3) authorizes the FCC to preempt any state regulations that are inconsistent with FCC regulations or would substantially prevent implementation of the TCA's and the Commission's interconnection goals. Section 253 authorizes the Commission to preempt state and local laws that prohibit, or have the effect of prohibiting, the ability of any entity to provide interstate or intrastate telecommunications service.	The FCC's authority over wireline services is expanded from jurisdictionally interstate services including Part 69 access to include regulation of formerly state services.	The states' jurisdiction over wireline services is reduced. Unlike *Louisiana PSC*, Section 251(d)(3) no longer requires that interstate and intrastate portions of a service be "inseverable" for the FCC to preempt state regulation. The FCC may preempt state interconnection regulations if they are inconsistent with the FCC's requirements *or* if they would substantially prevent implementation of the FCC's and the TCA's interconnection goals. Section 253 authorizes the FCC to preempt any state requirement inhibiting provision of interstate *or* intrastate telecommunications service.
Section 251(i) makes clear that the new interconnection provisions "are in addition to, and in no way limit or affect, the Commission's existing authority under section 201 of the Communications Act."	The FCC's plenary authority over all LEC-to-CMRS interconnection under Sections 332(c)(1)(B) and 201(a) is preserved.	

1/ *See Houston, East & West Texas Railway Co. v. United States*, 234 U.S. 342, 24 S.Ct. 833, 58 L.Ed. 1341 (1914) ("*Shreveport Rate Cases*").

2/ 234 U.S. at 351.

3/ 234 U.S. at 358.

4/ *See Louisiana Public Serv. Comm'n v. FCC*, 476 U.S. 355, 372, 106 S.Ct. 1890, 1900 (1986) ("*Louisiana PSC*").

5/ *See California Interstate Tel. Co. v. FCC*, 1 Rad. Reg. 2d (P&F) 2095, 2099 (D.C. Cir. 1964); *California Interstate Tel. Co. v. Western Union Tel. Co.*, 1 Rad. Reg. 2d (P&F) 2081, 2082 (Calif. Pub. Util. Comm'n, 1963).

6/ *See New York Tel. Co. v. FCC*, 631 F.2d 1059 (1980).

7/ *See id.*, 631 F.2d at 1066 (citing *United States v. Southwestern Cable Co.*, 392 U.S. 157, 168-9, 88 S.Ct. 1994, 2000-2001 (1968); *General Tel. Co. v. FCC*, 413 F.2d 390, 401 (D.C. Cir.), *cert. denied*, 396 U.S. 888, 90 S.Ct. 173 (1969)).

8/ *See Nat'l Ass'n of Reg. Util. Comm'rs v. FCC*, 746 F.2d 1492 (D.C. Cir. 1984).

9/ *See id.*, 746 F.2d at 1498 (quoting *California v. FCC*, 567 F.2d 84, 86 (D.C. Cir. 1977) (per curiam), *cert denied*, 434 U.S. 1010 (1978); *Nat'l Ass'n of Reg. Util. Comm'rs v. FCC*, 738 F.2d 1095, 1114-5 (D.C. Cir. 1984); *Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198, 214-218 (D.C.Cir. 1982), *cert. denied*, 491 U.S. 938 (1983)).

10/ *See The Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Declaratory Ruling, 2 FCC Rcd 2910, 2912 (1987).